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PROJECT NO. 51830

REVIEW OF CERTAIN RETAIL	§	PUBLIC UTILITY COMMISSION
ELECTRIC CUSTOMER PROTECTION	§	
RULES	§	OF TEXAS

Joint REPs' Reply Comments Executive Summary

The following bullet points provide a summary of Joint REPs' Reply Comments:

Regarding the various proposals to the provider of last resort ("POLR") rule:

- OPUC's proposed POLR rate cap would create asymmetric and uncompensated risk for Large Service Providers ("LSPs") and have other negative impacts for the competitive retail market.
- Windrose's recommendation to eliminate 16 TAC § 25.43(m)(4) should be rejected. Windrose's suggestion to reference average forward energy prices may warrant consideration, however, under the existing POLR minimum and maximum rate structure that ARM recommended retaining in initial comments.
- TLSC/AARP's broader POLR service recommendations are outside the scope of this rulemaking to implement H.B. 16. They should nonetheless be rejected as undermining PURA's requirement to let "normal forces of competition" determine electric services and their prices.
- If the Commission adopts CCR's calendar year proposal for calculating the POLR minimum energy charge, then associated EFL updates should be due on April 1 instead of December 31.

Regarding the various proposals for 16 TAC § 25.475:

- OPUC and TLSC/AARP's proposals to prohibit indexed products and products containing ancillary service pass-through charges should be rejected as unsupported by law and restricting competitive innovation.
- TLSC/AARP's proposals regarding REP Terms of Service ("TOS"), Electricity Facts Labels ("EFLs"), and Your Rights as a Customer ("YRAC") documents, along with proposed requirements for the Commission to review each, should be rejected as impractical, unnecessary, and outside the scope of this rulemaking, as well as for failing to demonstrate any actual non-compliance.

- Octopus Energy’s default renewal pricing disclosure proposal should be rejected as unnecessary, impractical, and exceeding the statutory requirements of H.B. 16.
- Octopus Energy’s contract expiration notice proposal should be rejected as potentially causing more harm than good while deviating from the express statutory language of H.B. 16.
- The Commission should decline CCR’s proposal to modify the definition of Fixed Rate Product to have separate treatments for “bundled” vs. “unbundled” plans.
- Joint REPs are generally supportive of the Joint TDUs’ consolidated draft of outage information, with certain modifications.
- The Commission should decline CCR’s proposed changes to 16 TAC § 25.499, and instead closely track the express statutory language of H.B. 16. This helps to avoid creating regulatory paradox vis-à-vis 16 TAC § 25.471(a)(3) and 16 TAC § 25.474.

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REVIEW OF CERTAIN RETAIL	§	PUBLIC UTILITY COMMISSION
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**REPLY COMMENTS OF ALLIANCE FOR RETAIL MARKETS,
TEXAS ENERGY ASSOCIATION FOR MARKETERS, AND
COALITION OF COMPETITIVE RETAIL ELECTRIC PROVIDERS**

I. INTRODUCTION

At the July 29, 2021 Open Meeting, the Public Utility Commission of Texas (“Commission”) approved the Proposal for Publication (“PFP”) to implement changes from House Bill (“H.B.”) 16 and certain sections of Senate Bill (“S.B.”) 3 of the 87th Legislature. On August 27, 2021, the Alliance for Retail Markets (“ARM”) and the following entities each filed initial comments in response to the PFP: Coalition of Competitive Retail Electric Providers (“CCR”), Joint ERCOT TDUs, Octopus Energy, the Office of Public Utility Counsel (“OPUC”), Robert L. Borlick, Texas Energy Association for Marketers (“TEAM”), Texas Legal Services Center (“TLSC”) and American Association of Retired Persons Texas (“AARP”), TXU Energy Retail Company LLC, and Windrose Power & Gas, LLC (“Windrose”).

ARM, TEAM, and CCR (collectively the “Joint REPs”) jointly submit these Reply Comments as follows:

II. EXECUTIVE SUMMARY

The executive summary included separately above contains a bulleted list of key points, and a more in-depth response to various topics raised in stakeholders’ initial comments organized by rule is contained in Section III of these comments. A redline document is also included as **Exhibit A** containing the cumulative edits proposed by Joint REPs and a redline of the Joint TDUs’ proposed notice is included as **Exhibit B**.

III. REPLY COMMENTS

A. 16 TAC § 25.43, Provider of Last Resort

1. *OPUC's Proposed POLR Rate Cap*

In response to the first question included by the Commission in the PFP, OPUC recommends that a cap on the Provider of Last Resort (“POLR”) energy rate be implemented to limit year-to-year increases to no more than a certain percentage: 20% for residential customers and 25% for non-residential customers.¹ OPUC asserts that caps of these amounts will limit any potential rate shock by customers.

As explained in ARM’s initial Comments,² a threshold cap is not necessary for the POLR rate because it is a short-term rate and no customer should remain on it from one year to the next and therefore the risk of year-to-year rate shock is unlikely. To reinforce its short-term nature, 16 TAC § 25.43(j)(4) requires Large Service Providers (“LSPs”) to move residential and small non-residential customers that have been dropped to POLR to a month-to-month market-based product after 60 days if the customer has not switched or selected another offer from the POLR. The maximum rate for POLR customers should be set with a recognition of market conditions. This will ensure that any year over year differences in the maximum POLR rate will be based on market conditions that are beyond the REPs’ control. The use of an average of historic energy prices as proposed in ARM’s formula for the maximum POLR rate by its nature will also dampen any periods of price volatility.

Fundamentally, the POLR formula rate in 16 TAC § 25.43(m)(2) is a stop-gap measure that must allow LSPs to recover the cost of providing service to customers on short notice and quite likely under scenarios of market duress. Costs to serve these customers under these scenarios will be high and LSPs face an above-average bad debt risk as well. While many if not most LSPs have chosen in prior POLR events to wear that risk and serve customers on market-based rates (either as an LSP or as a Volunteer REP (“VREP”)), the decision to take on uncompensated risk should be left to the REP and not mandated by rule. Instead, the Commission’s rule should continue to strike the appropriate balance of reflecting the true costs and risks to LSPs of maintaining

¹ Office of Public Utility Counsel’s Initial Comments on Commission’s Proposal for Publication at 2 (Aug. 27, 2021) (“OPUC Comments in Response to PFP”).

² Alliance for Retail Markets’ Comments in Response to Proposal for Publication at 23 (Aug. 27, 2021) (“ARM Comments in Response to PFP”).

reliable service to customers in a POLR event while also allowing LSPs to substitute a market-based rate at its discretion.

The Joint REPs therefore urge the Commission to either defer making changes to the POLR rate until a later time or adopt ARM's alternative proposal to maintain the current POLR minimum/maximum structure, but modified to bypass the direct pass-through of real-time settlement point prices (RTSPPs) for the residential and small non-residential customer classes.³ Notably, deferring a decision on the POLR rate would not likely create any practical risk of violating H.B. 16. First, H.B. 16 prohibits the *offering or enrollment of* residential and small commercial customers on wholesale indexed products, but does not forbid the use of such products for managing risks associated with POLR events.⁴ Notably, the POLR rate is neither offered nor enrolled upon in a POLR event – it is a construct designed to ensure continuous service when a customer's REP abruptly exits the market. Second, for the remainder of the current POLR term (expiring at the end of 2022) there appears to be sufficient VREP support to ensure that any future POLR events during this term would be served on market-based rates and not exposed to the RTSPPs.

However, if the Commission chooses to institute a cap nevertheless, Joint REPs recommend that the cap be set after consideration of the final POLR calculation determined in this proceeding. The cap would need to account for several factors, such as whether the final formula is set as only a multiplier of past rates, set to an arbitrarily low rate, or developed to lessen the long term risk that the POLR rate does not recover costs. A low cap with a low formula could put POLR providers at risk of not being able to recover sufficient costs under the rule, especially in years where prices greatly decrease in one year and rebound the next. For example, between 2015 and 2020, average RTSPPs relevant for the Oncor service territory have seen year-over-year variances that exceed 20% in 3 out of 5 years.

³ See *id.*

⁴ H.B. 16 did not make any changes to PURA § 39.106, which provides the specific statutory requirements related to POLR, nor does H.B. 16 cross reference § 39.106 in its sections relating to the prohibition of wholesale indexed price products for residential and small commercial customers.

<u>Year</u>	<u>LZ HOUSTON</u>	<u>LZ NORTH</u>	<u>LZ SOUTH</u>	<u>LZ WEST</u>	<u>Oncor*</u>	<u>% Change</u>
2015	\$ 27.17	\$ 26.28	\$ 27.40	\$ 28.29	\$ 28.29	
2016	\$ 21.82	\$ 20.39	\$ 22.06	\$ 19.59	\$ 22.06	-22%
2017	\$ 28.99	\$ 24.15	\$ 28.37	\$ 23.84	\$ 28.37	29%
2018	\$ 29.18	\$ 27.71	\$ 31.86	\$ 35.14	\$ 35.14	24%
2019	\$ 37.34	\$ 36.82	\$ 38.48	\$ 39.44	\$ 39.44	12%
2020	\$ 24.45	\$ 23.86	\$ 27.50	\$ 39.79	\$ 39.79	1%

**max of LZ_NORTH, LZ_SOUTH, and LZ_WEST*

2. Windrose's POLR Rate Recommendation

Windrose filed comments recommending that the energy charge component of the POLR rate be based on the short-term forward market on the Intercontinental Exchange ("ICE") by using the average price for the next 30 days for the ICE *ERCOT North 345 kV Real-Time Peak Fixed Price Future* contract.⁵ As proposed, this amount would be multiplied by the customer's usage and include an adder of 200% to take non-energy costs such as losses and ancillary services into account. This proposal warrants consideration as a maximum POLR rate, with the minimum POLR rate continuing to be calculated as it is under the current rule. However, if Windrose's proposal is adopted, the Commission should consider the appropriate percentage for the adder, which may be better suited to be somewhere between 125% and 200%.

Windrose also recommends that the adjustment provision of 16 TAC § 25.43(m)(4) be removed because Windrose asserts that its proposed changes to the POLR energy charge will make it no longer necessary and "this will give the market a false sense of certainty that the market 'knows' the current POLR rate but the reality is it could be adjusted."⁶ Joint REPs disagree with this proposal and recommend that the good cause adjustment provision in § 25.43(m)(4) be maintained. This recommendation actually highlights the concerns raised above and in ARM's initial comments regarding the impacts that the POLR rate could have on the retail market. While having the ability to request an adjustment has the important potential to ensure that LSPs are not forced to operate at a severe loss by taking on customers at rates that do not cover the prevailing costs of providing service, requiring each LSP to seek a good cause exception in a circumstance that warrants good cause would be quite resource-intensive for both the Commission and LSPs, which could be entirely avoided by simply designing the POLR rate to reflect risk in an appropriate

⁵ [Revised] Initial Comments of Windrose Energy at 4 (Aug. 27, 2021).

⁶ *Id.* at 2.

manner. To be clear, use of the POLR rate should be rare and use of the good cause exception clause even more rare because a well-designed POLR rate will already cover most if not all of the LSP's costs to provide service, but when necessary it still incorporates adequate safeguards by being implemented only on an interim basis and only after notice of at least 10 business days and an opportunity for hearing. This provision is an important circuit breaker that should be in place for unanticipated events.

3. TLSC's/AARP's POLR Rate Recommendation

TLSC/AARP jointly filed comments in which they propose that POLR service be fundamentally changed into a long-term option for customers by making it a standard retail service package that uses average prices being paid in the market.⁷ Joint REPs note that the Commission has declined similar proposals,⁸ and TLSC/AARP's proposed changes are well outside of the reasonable scope of a rulemaking to implement the specific directives of H.B. 16 and S.B. 3. As numerous commenters have identified, the POLR rate carries more significance in the retail market than simply the rate that *may* be charged in the event of an abrupt market exit, and changes such as those proposed by TLSC/AARP should not be considered in this more narrowly construed rulemaking. It is important that the Commission continue to recognize that the POLR program is a short-term solution to ensure that customers do not experience a disruption in service if their competitive REP exits the market. It is not a substitute for competitively priced product offerings available to customers.

Notwithstanding that TLSC/AARP's proposal is out of scope for this rulemaking, Joint REPs oppose this recommendation on principle as well. PURA § 39.001(a) is clear that the state's policy is that "electric services and their prices should be determined by customer choices and the

⁷ See Texas Legal Services Center AARP Texas Initial Comments on Proposal for Publication of Amendments of 16 TAC §25.43, 25.471, 25.475, 25.479, and 25.498 and new §25.499 as Approved at the July 29 Open Meeting August 27, 2021 at 7-9 (Aug. 27, 2021) ("TLSC and AARP Comments in Response to PFP").

⁸ See *Evaluation of Default Service For Residential Customers And Review of Rules Relating To The Price to Beat and Provider of Last Resort*, Project 31416, Order at 25 (July 11, 2006) ("The commission disagrees with OTTA and Cities that the purpose of POLR should be to provide 'reasonable' electric prices. The commission restates that in accordance with (b)(3), the purpose of POLR is to ensure continuity of service."); see also *Rulemaking to Amend Subst. R. 25.43, Relating to Provider of Last Resort (POLR)*, 25.478, *Relating to Credit Requirements and Deposits*, and 25.498, *Relating to Prepaid Service*, Project No. 39969, Order at 11 (July 27, 2012) ("As the commission discussed in its order approving amendments to the POLR rule in Project No. 31416, the POLR rate is intended to recover costs associated with POLR service and should not be a rate that competes with market offerings.").

normal forces of competition.” TLSC/AARP’s proposal to require the POLR rate to be set at an average price would ultimately pressure the market towards convergence on the average price point, eradicating incentives to innovate or provide added value to retail electricity customers. Rather than forcing all REPs in the market to offer the products that TLSC/AARP seek, educating customers about the multitude of product choices that are available to them in the retail competitive market, which products must comply with the Commission’s robust customer protection rules, is the better path.

4. CCR’s POLR Rate Recommendation

CCR filed comments generally supporting the POLR rate as proposed in the PFP, but recommending that the 12-month period proposed in § 25.43(m)(2)(A)(iii) and (m)(2)(B)(iv) follow the calendar year rather than the fiscal year.⁹ CCR explained that use of a calendar year period would be simpler and better promote customer understanding of the rate calculation. If this change is adopted, Joint REPs recommend that LSPs be given sufficient lead time to calculate the rate and incorporate it into the Electricity Facts Label (“EFL”). If the twelve month period ends on December 31, LSPs should have until April 1 to post updated EFLs. This three-month timeframe is accelerated from the current four-month window but allows for ERCOT to complete final settlement for December of the preceding year (which occurs 55 days after the operating day, so December 31 has its final settlement in the last week of February each year).

B. 16 TAC § 25.475, Information Disclosures to Customers

1. *OPUC’s and TLSC/AARP’s Recommendations to Prohibit Certain Products*

OPUC¹⁰ and TLSC/AARP¹¹ each propose that the Commission prohibit indexed products and products containing ancillary service pass-through charges for residential and small commercial customers. Joint REPs disagree with this proposal and urge the Commission not to ban products unless specifically required to do so by law. As CCR noted in its initial comments, PURA § 39.001(c) prohibits the Commission from “mak[ing] rules or issu[ing] orders regulating

⁹ Initial Comments of Coalition of Competitive Retail Electric Providers at 3 (Aug. 27, 2021) (“CCR Comments in Response to PFP”) (proposing that these subsections state “for the previous 12-month period ending December 31” rather than ending on September 1).

¹⁰ See OPUC Comments in Response to PFP at 3-4.

¹¹ See TLSC and AARP Comments in Response to PFP at 5-7.

competitive electric services, prices, or competitors or restricting or conditioning competition except as authorized in this title.”¹² The Legislature has banned wholesale indexed products for residential and small commercial customers, but has made no such directive for indexed products or products containing ancillary service pass-through charges. The Commission should therefore reject these proposals.

As noted in ARM’s initial Comments, categorical prohibitions of product types stifles the creative solutions that competitive markets are intended to foster and, in addition to the risk of unforeseen knock-on effects, ultimately results in less competition and increased prices.¹³ Indexed products can be valuable for customers, which is evidenced by the fact that customers freely choose them and find them appealing in certain circumstances. After ensuring that customers are adequately informed of the characteristics and potential risks of a product, customers in a competitive market should be allowed to assess the costs and benefits and choose from as wide a range of options as possible.

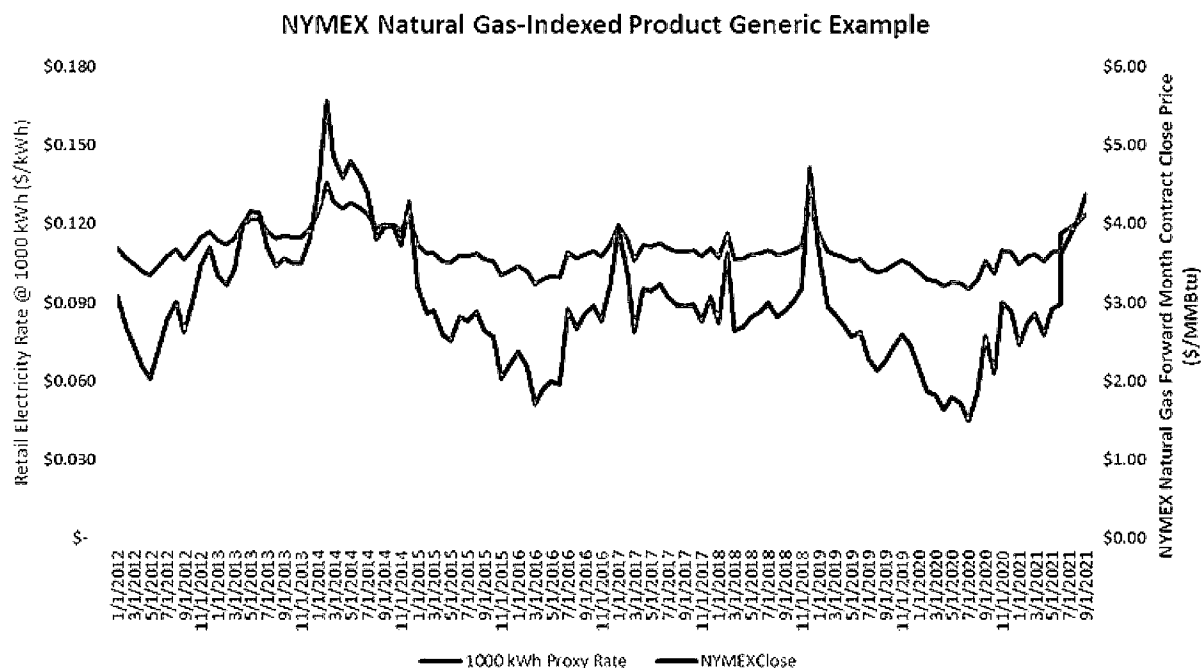
Further, Joint REPs want to clarify that the indexed products available to residential customers that are tied to natural gas prices are generally indexed to the prior month’s forward natural gas contract close price, not to the daily spot natural gas prices that can exhibit greater volatility.¹⁴ Since January 2012, the prompt month NYMEX gas contract price has ranged from \$1.495/MMBtu to \$5.557/MMBtu, and averaged \$3.00/MMBtu. While month-over-month changes in the NYMEX forward gas prices moved up by as much as 49% and down by as much as 27%, the impact on an indexed retail rate is much more muted. Consider, as a generic example, a NYMEX-indexed rate with a TDU customer charge of \$5.00, TDU volumetric charges of \$0.04/kWh, a REP base charge of \$5.00, a REP energy charge of \$0.03/kWh, and a natural gas factor of 0.010. The 1,000 kWh average rate for this product from 2012 to the present would average \$0.110/kWh, fluctuating between \$0.095/kWh and \$0.136/kWh, but the most the rate would move up in any given month would be 13.7% (and it could fall month over month by as much as 8.9%). Offers on the Commission’s Power to Choose website currently range from

¹² See CCR Comments in Response to PFP at 2; see also Public Utility Regulatory Act, TEX. UTIL CODE § 39.001(c) (“PURA”).

¹³ See ARM Comments in Response to PFP at 26.

¹⁴ See OPUC Comments in Response to PFP at 4.

\$0.075/kWh to \$0.191/kWh, by comparison.¹⁵ Joint REPs submit, therefore, that the volatility of NYMEX-indexed (and other non-wholesale indexed) products ought not raise the same concerns as the wholesale indexed products that the Legislature chose to specifically ban for residential and small commercial customers.



2. TLSC/AARP’s Allegations Related to REP Terms of Service

TLSC/AARP allege that some REPs’ Terms of Service (“TOS”) contradict the Commission’s customer protection rules and they include as attachments to their Comments “sample” TOS which they generally assert include such violations without specifically explaining which provisions are violations and how.¹⁶ For instance, they make the general assertion that “Attachment A illustrates the extent of the practice of inappropriately using the TOS as a letter of authorization to release a customer’s information to collection agencies and other third parties”,

¹⁵ See Power To Choose, www.powertochoose.org (last visited Sept. 4, 2021).

¹⁶ TLSC and AARP Comments in Response to PFP at 11.

but they do not identify the provisions of the TOS to which they refer or explain how the TOS is in violation of any of the Commission's rules.¹⁷

Similarly, TLSC/AARP make general assertions about their "Attachment B which contains excerpts from Terms of Service Agreements which in some cases violate §25.485(c) and some are written in language full of legalese that the average consumer would not fully comprehend." However, there is no analysis of the provided TOS examples specifying their alleged violations, nor an explanation of why they might provide a broad sample set for which they allege violations only "in some cases" without distinction. If anything, it appears that TLSC/AARP allege that arbitration clauses in TOS are not permitted at all for a residential or small commercial customer, but that is not a correct reading of the rule. 16 TAC § 25.485(c) was part of the original rule (then as subsection (b)), and in first adopting the rule the Commission explicitly noted that:

"[P]roposed §25.485(b) does not preclude a REP from using alternative dispute resolution. Rather, it states that the REP is not allowed to require the customer to use this method. In addition, the commission finds it is inappropriate to require a customer to first make a complaint to the REP. The customer should have the freedom to make a complaint to whomever the customer chooses."¹⁸

That is, arbitration clauses are permissible so long as they do not infringe upon a customer's right to seek relief through other avenues, specifically including informal or formal complaints to the Commission. A cursory review of TLSC/AARP's Attachment B does not highlight any example of a TOS that bars a customer from seeking relief from the Commission through its complaint process (and in fact, many explicitly acknowledge that right).

TLSC/AARP also imply that customers cannot waive applicability of the Commission's customer protection rules.¹⁹ While that is accurate as to residential and small commercial customers, 16 TAC § 25.471(a)(3) permits customers other than residential or small commercial customers to waive applicable portions of the Commission's customer protection rules.

Given the failure to clearly demonstrate any non-compliance, Joint REPs recommend that the Commission find TLSC/AARP's proposals in Section IV.C.5 of their comments to be well

¹⁷ See *id.* at 15.

¹⁸ *PUC Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing SB 7 and SB 86*, Project No. 22255, Order Adopting New Subchapter R, Customer Protection Rules for Retail Electric Service, in Chapter 25, as Approved at the December 7, 2000 Open Meeting and Submitted to the Secretary of State at 194 (Dec. 7, 2000).

¹⁹ TLSC and AARP Comments in Response to PFP at 11-14.

outside of the reasonable scope of a rulemaking to implement the specific directives of H.B. 16 and S.B. 3.

3. *TLSC/AARP's Proposal to Require REPs to Obtain Commission Approval of Terms of Service*

TLSC/AARP urge the Commission to institute procedures to require periodic review of REPs' TOS²⁰ and further request that the Commission review each TOS to assess compliance with Commission rules.²¹ Joint REPs disagree that such impractical measures are necessary or appropriate.

First, 16 TAC § 25.475(c)(1)(D) already requires REPs to retain a copy of each version of a TOS while the plan is in effect and for four years after it ceases to be in effect and to provide any TOS to the Commission or Staff upon request. Second, 16 TAC § 25.492 and PURA § 15.023 institute significant penalties for REP non-compliance with PURA or the Commission's rules or orders that serve as an adequate deterrent, including monetary penalties of up to \$25,000 per violation per day and even potential suspension or revocation of a REP's certification. And finally, it is a basic tenet of the competitive market that REPs are not rate-regulated entities and review and reporting requirements for TOS would fly in the face of this market structure.

Beyond the divergence of regulating a non-regulated entity though, this would also be a resource-intensive undertaking for both the Commission and REPs. Resources are better spent focusing on specific instances of non-compliance. Because TLSC/AARP have not actually demonstrated any non-compliance and the Commission's rules already provide sufficient investigative power and deterrence, TLSC/AARP's proposal should be rejected as unnecessary.

4. *TLSC/AARP's Proposal to Require REPs to Report All Offerings to the Commission*

TLSC/AARP urge the Commission to require REPs to submit all offerings to the Commission and certify that each published document is in full compliance with statutory and regulatory requirements.²² Similar to the Joint REPs' comments regarding the TLSC/AARP

²⁰ See *id.* at 12-18.

²¹ See *id.* at 17.

²² See *id.* at 11.

proposed TOS review, Joint REPs disagree that such impractical measures are necessary or appropriate.

Joint REPs note that 16 TAC § 25.107(h) already requires REPs to comply with all applicable customer protection requirements as a condition for REP certification. A REP that demonstrates a pattern of customer protection rule violations may be subject to having its REP certificate suspended or revoked under 16 TAC § 25.107(j). Setting aside the regulatory risk of non-compliance, REPs are intrinsically motivated to ensure that their customers are satisfied. The simple fact is that customers can easily switch to a different REP if they feel mistreated by their current REP (regardless of whether any customer protection rule was violated). TLSC/AARP's proposal to require a REP to "certify compliance of each published document" is unnecessary and would create significant administrative burdens for REPs (and likely the Commission as well) while providing no incremental benefit.

Similarly, 16 TAC § 25.475(c)(1)(D) already requires REPs to retain a copy of each version of the TOS, EFL, and YRAC while the plan is in effect and for four years after it ceases to be in effect, and to provide any such document to the Commission or Staff upon request. Therefore the Commission already has the ability to compel information regarding offerings in the market if and when it deems such information useful, but requiring the provision of such information would likely inundate the Commission with thousands of offers on any given day. TLSC/AARP have not demonstrated any compelling reason for requiring REPs and the Commission to take on the administrative burden that their proposal would create. TLSC/AARP's proposal should be rejected as unnecessary.

5. TLSC/AARP's EFL Proposal

TLSC/AARP recommend that, for any rate plan under which a rate can change, EFLs be required to include the lowest and highest rates charged under that plan.²³ This would not be feasible or necessary for several reasons. For instance, many customers remain on month-to-month products for long periods of time; thus, REPs would not know, at the time that the customer's EFL is issued, how much that rate could change over the duration of that customer's service on the product. Furthermore, REPs do not control the amount or effective date of TDU rate changes reflected in products' non-bypassable charges. Also, 16 TAC § 25.475 requires REPs

²³ *Id.* at 19.

to disclose factors that can cause the rate to change, which provides notice to customers of the variability of the rate. Accordingly, Joint REPs recommend that the Commission reject TLSC/AARP's proposal to require disclosure of a highest and lowest rate for any plan with rate components that can change.

6. *TLSC/AARP's Power to Choose Proposals*

TLSC/AARP request that the Your Rights As a Customer ("YRAC") document be required to be posted to the Power to Choose website along with the TOS, and further that the YRAC be reviewed by the Commission.²⁴ In regard to the latter request, if TLSC/AARP mean to recommend that REPs be required to submit the YRAC on a recurring basis to the Commission for review, Joint REPs disagree that this is necessary for the same reasons raised in Section C.3. to these Reply Comments. The requirement in 16 TAC § 25.475(c)(1)(D) to retain and provide a copy to Staff upon request applies to YRACs to the same extent as to TOSs.

TLSC/AARP also argue that REPs should be required to include the Power to Choose phone number on customer bills. Because the Power to Choose website is operated by the Commission, this would essentially require the agency to take on the role of retail shopping advisor for customers. This is not appropriate nor does the Commission likely have the resources to devote to those efforts. If customers have questions about retail electric products, they should contact their REP as REPs are better able to assist customers in evaluating products that would best meet their needs.

7. *Octopus Energy's Default Renewal Pricing Disclosure Proposal*

Octopus Energy filed comments addressing the PFP's requirement in 16 TAC § 25.475(e)(3)(A) that if a customer takes no action in response to a final contract expiration notice ("CEN"), then the REP must serve the customer pursuant to a default renewal product that is a month-to-month product.²⁵ Octopus Energy proposes that this subsection be amended to require REPs to "provide on a monthly basis clear notice of the price applicable to a default renewal product before that product goes into effect for a customer each month."²⁶

²⁴ *Id.*

²⁵ See Comments of Octopus Energy at 6-8 (Aug. 27, 2021).

²⁶ *Id.* at 1.

This proposal is unnecessary, impractical, and goes beyond the statutory requirements of H.B. 16, which added subsection (h) to PURA § 39.112 and requires only that the REP “automatically serve the customer through a default renewal product that the customer may cancel at any time without a fee...” and that it must be “a month-to-month product in which the price the customer pays for electricity may vary between billing cycles;” and “based on clear terms designed to be easily understood by the average customer.” No such additional monthly notice requirement was required by the Legislature in this instance and the Commission should decline to add such a provision here.

Such notice is also not necessary based on REPs’ existing obligations to provide customers notice of the price. Because H.B. 16 requires that the default renewal product be a month-to-month product, it must be either a variable or an indexed product. If it is an indexed product, then § 25.475(g)(2)(F) requires that the EFL disclose a website and phone number that the customer may use to obtain the current price. If it is a variable product, then REPs are required by § 25.475(c)(2)(G) to disclose on their website and via a toll-free number the current price of the product. The EFL for a variable price product must also disclose how the customer can obtain the current price (§ 25.475(c)(2)(G)) and each bill must include a statement informing the customer how to obtain information about the price that will apply on the next bill (§ 25.475(d)(2)).

The default renewal product’s price cannot be practically known until close to the end of the contract when the REP will have some sense for (1) how many customers have not selected another renewal product or switched away; (2) what wholesale energy and ancillary service market conditions and prices are; and (3) what TDU rates are. Similarly, the actual price paid by the customer cannot be determined until after the customer’s actual usage for a given month is known (i.e., customer charges, meter charges, demand charges, usage-based credits, and other “blocky” price components result in an actual price that varies as these inputs are amortized across a customer’s monthly usage). The Legislature recognized this dynamic in H.B. 16 by only requiring that the default renewal pricing terms be disclosed in the final contract expiration notice (see PURA § 39.112(f)). The Commission should therefore decline to incorporate Octopus Energy’s impractical proposals to expand upon the statutory requirement by requiring monthly default renewal pricing and “actual price” notification 24 to 72 hours before the rate becomes applicable.

8. Octopus Energy’s Contract Expiration Notice Proposal

Octopus Energy raised the concern that REPs that fail to send a CEN in accordance with 16 TAC § 25.475(e)(2)(C) as proposed in the PFP may continue to serve the customer on the fixed rate product for an extended period of time, which could be disadvantageous for the customer.²⁷ Octopus Energy recommends that 16 TAC § 25.475(e)(2)(C) be amended to state that if a REP fails to provide a CEN, the REP must continue to serve the customer under the terms of that fixed rate contract until a sufficient CEN is provided “during a period of up to three months.”

Joint REPs recognize the concern, but the proposed amendment to subsection (e)(2)(C) would likely do more harm than good and would deviate from express statutory language in PURA § 39.112(j). This may best be addressed by the inclusion of an explanation in the preamble that this requirement is not intended to allow a REP to avoid sending a customer a CEN by merely continuing to serve that customer on a fixed price product.

9. CCR’s Proposal to List the Prepaid Disclosure Statement

CCR’s Comments propose that Prepaid Disclosure Statements be included within the definition of Contract Documents in 16 TAC § 25.475(b)(2) with the qualifier “if applicable”.²⁸ Joint REPs agree and have included this proposal in the attached redline.

10. CCR’s Proposal Related to Disclosure of Bundled/Unbundled Products

In its initial Comments, CCR recommended that the definition of Fixed Rate Product be modified such that a “bundled” product is included in the definition but for an unbundled product only the generation portion of the product may be marketed as “fixed.”²⁹ However, the addition of a bundled or unbundled designation to the definition of Fixed Rate Product is problematic and may confuse customers. Based on the requirements of 16 TAC § 25.475, REPs should already be including information designating which terms of a product can and cannot change in the EFLs. For instance, § 25.475(d)(2) establishes when a price may be changed and whether and how notice of such change is required. Specifically in regard to EFLs, § 25.475(c)(2)(D) requires that an EFL disclose the type of product being described as a fixed rate product, indexed product, or variable price product, § 25.475(g)(2)(A)-(E) establishes the pricing information to be included in the EFL

²⁷ *Id.* at 6.

²⁸ CCR Comments in Response to PFP at 3.

²⁹ *Id.* at 5-6.

for each of these product types, and § 25.475(g)(2)(F) and (g)(3) specify additional required disclosures touching on price and fee changes. The EFL form itself in § 25.475(g)(6) requires REPs to state whether or not the price can change during the contract period and, if so, a description of the way that the price will vary and by how much. For these reasons, Joint REPs recommend that the Commission not adopt the bundled versus unbundled modifications in the definition of Fixed Rate Product.

11. Robert Borlick's Recommendation

Robert L. Borlick filed comments responding to the PFP on August 27 and subsequently filed revised comments on August 30. His initial comments recommended that H.B. 16 still permitted limited offerings of Wholesale Indexed Products to residential customers,³⁰ but Mr. Borlick acknowledged in his revised Comments that, “Upon reflection, that recommendation is not realistic. H.B. 16 is clear and unambiguous. The Commission has no authority to override it.”³¹ Joint REPs agree that Wholesale Indexed Products are prohibited by H.B. 16 for residential and small commercial customers.

C. 16 TAC § 25.479, Issuance and Format of Bills

The Joint ERCOT TDUs³² filed comments proposing that the public service notice information required to be provided by TDUs to REPs pursuant to S.B. 3³³ be provided in a uniform template.³⁴ A proposed two-page template is included as Exhibit A to the Joint ERCOT TDUs' Comments. Joint REPs applaud the efforts of the TDUs to develop a single consistent draft

³⁰ See Comments of Robert L. Borlick at 1-2 (Aug. 27, 2021).

³¹ Revised Comments of Robert L. Borlick at 4 (Aug. 30, 2021).

³² The Joint ERCOT TDUs are AEP Texas Inc., CenterPoint Houston Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company.

³³ S.B. 3 amended PURA § 17.003 to require information to be provided about “the electric utility’s procedures for implementing involuntary load shedding initiated by the independent organization certified under Section 39.151 for the ERCOT power region”, “the types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load”, “the procedures for a customer to apply to be considered a critical care residential customer, a critical load industrial customer, or critical load”, and “reducing electricity use at times when involuntary load shedding events may be implemented.”

³⁴ Joint ERCOT TDU Comments to Proposed Amendments and New Rule at 1-2 (Aug. 27, 2021).

for the REPs to disseminate to customers. We look forward to continuing to work with the Joint TDUs and the Commission Staff to finalize the language.

Joint REPs support the use of a standardized notice as long as it accurately conveys the information required by S.B. 3 and is timely updated when material changes in the information occur. To more accurately depict the relationships between customers, REPs, and TDUs in the competitive market, Joint REPs propose that the template refer consistently and solely to “customers” by removing “its” and “our” from the last paragraph of the template. Additionally, Joint REPs propose deleting language in the Joint TDUs’ proposed notice that may detract from the necessary content of the message and propose additional clarifying edits. These proposed edits are included as **Exhibit B** to these comments.

D. 16 TAC § 25.499, Acknowledgement of Risk Requirements for Certain Commercial Customers

CCR’s initial Comments recommended that the Acknowledgement of Risk (“AOR”) requirement be modified to allow for alternative means of obtaining customer consent beyond just a customer’s signature.³⁵ For larger commercial customers, CCR’s initial comments propose that this may be accomplished by allowing for one of the methods authorized in § 25.474 using a cross-reference to that section in § 25.499.³⁶

16 TAC § 25.474 may be waived by large commercial customers pursuant to 16 TAC § 25.471(a)(3). Furthermore, H.B. 16 is clear in PURA § 39.110(c) that a prerequisite to enrollment of a customer other than a residential or small commercial customer on a wholesale indexed product is “an acknowledgement *signed* by the customer that the customer accepts the potential price risks associated with a wholesale indexed product.” (*emphasis added*). Therefore, the Joint REPs maintain that the proposed cross-reference recommended by CCR’s initial Comments should not be added.

IV. CONCLUSION

For the reasons stated herein, Joint REPs respectfully request that the Commission adopt a Proposal for Adoption as reflected in the attached Exhibit A. Additionally, should the Commission consider adopting a template for public service notice information required to be provided by

³⁵ CCR Comments in Response to PFP at 8.

³⁶ *Id.* at 9.

TDUs to REPs pursuant to S.B. 3, Exhibit B provides the Joint REPs' proposed edits to the Joint TDUs' proposed template.

Date: September 7, 2021

Respectfully submitted,

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PROJECT NO. 51830

Exhibit A – Joint REPs’ Proposed Edits to the Proposal for Publication

§25.43. Provider of Last Resort (POLR).

(a) – (b) [No changes proposed to PFP.]

(c) **Definitions.** The following terms when used in this section have the following meanings, unless the context indicates otherwise:

- (1) **Affiliate** -- As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs).
- (2) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase “interruption for economic reasons” does not mean disconnection for non-payment.
- (3) **Billing cycle** -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.
- (4) **Billing month** -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer’s consumption is recorded through the customer’s meter.
- (5) **Business day** -- As defined by the ERCOT Protocols.
- (6) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).
- (7) **Large service provider (LSP)** -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

- (8) **Market-based product** – A month-to-month product that is either offered to or ~~matches~~ is consistent with the rates of a other in-market products offered to for non-POLR customers ~~of the REP~~ for the same TDU territory and similar customer class. ~~A month-to-month contract may not contain a termination fee or penalty.~~ For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.
- (9) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.
- (10) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.
- (11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.
- (12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.
- (13) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

- (14) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.
- (15) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.
- (16) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) – (e) [No change proposed to PFP]

(f) **Customer information.**

- (1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:

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Projects\Electric\37xxx\37034\16 TAC §25.43(f)(1)(A).docx Figure: 16

TAC §25.43(f)(1)(A) [update figure]

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B) [update figure]

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C) [update figure]

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(D) [update figure]

- (2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section must provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service must be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) – (i) [No changes proposed to PFP]

(j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.

- (1) The REPs eligible to serve as LSPs must be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.
- (2) In each POLR area, for each customer class, the commission will designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area must be

designated as LSPs. Commission staff will designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

- (3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by ~~January~~April 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.
- (4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section must move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

- (A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product will be provided at a later time, but no later than 14 days before their effective date.
- (B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP must move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP must inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.
- (5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under

this section, the commission may relieve an LSP from a transfer of additional customers. The LSP must continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) [No changes proposed to PFP]

(l) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers must be consistent with this subsection.

(1) ERCOT must first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP must not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT must:

- (A) Sort ESI IDs by POLR area;
- (B) Sort ESI IDs by customer class;
- (C) Sort ESI IDs numerically;
- (D) Sort VREPs numerically by randomly generated number; and

- (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must be assigned ~~a proportionate~~ an equal number of ESI IDs, ~~as calculated by dividing up to~~ as calculated by dividing up to the number that each VREP indicated it was willing to serve ~~by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number~~ for a given class and POLR area.
- (2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT must assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area must be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT must:
- (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
 - (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
 - (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

- (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWs served;
 - (E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWs served by each LSP to the total MWs served by all LSPs;
 - (F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and
 - (G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWs served by each LSP to the total MWs served by all LSPs.
- (3) Each mass transition must be treated as a separate event.

(m) **Rates applicable to POLR service.**

- (1) A VREP must provide service to customers using a market-based, month-to-month product. The VREP must use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.
- (2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum

rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) **Residential customers.** The LSP rate for the residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or other surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, ancillary service and ancillary service imbalance charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge must be \$0.069 per kWh.
- (iii) LSP energy charge must be the greater of:
 - (A) the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone located partially or wholly in the customer's TDU service territory that had the highest simple average for the previous 12-month period ending

December 31 ~~September 1~~ of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by ~~120~~125%; or

(B) The average of the actual RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average for the previous 60 days multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%.

(iv) “Number of kWhs the customer used” is based on ~~interval data~~information provided by the TDU.

(B) **Small ~~and medium~~ non-residential customers.** The LSP rate for the small ~~and medium~~ non-residential customer classes must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or other surcharges, RUC capacity short charges attributable to LSP load, ancillary service and ancillary service imbalance changes attributable to LSP load, and

applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

- (ii) LSP customer charge must be \$0.0~~25~~5 per kWh.
- (iii) LSP demand charge must be \$2.00 per kW, per month, for customers that ~~have a~~ are assessed a demand ~~meter charge on~~ non-bypassable charges, and \$50.00 per month for customers that ~~do not have~~ are not assessed a demand ~~meter charge~~.
- (iv) LSP energy charge must be the greater of:
 - (A) the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone located partially or wholly in the customer's TDU service territory that had the highest simple average for the previous 12-month period ending December 31September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%; or
 - (B) The average of the actual RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average for the previous 60 days multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%.
- (v) "Number of kWhs the customer used" is based on ~~interval data~~information provided by the TDU.

(C) Medium non-residential customers. The LSP rate for the medium non-residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or other surcharges, RUC capacity short charges attributable to LSP load, ancillary service and ancillary service imbalance charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge must be \$0.025 per kWh.
- (iii) LSP demand charge must be \$2.00 per kW, per month, for customers that ~~have a~~ are assessed a demand ~~meter charge on non-bypassable charges~~, and \$50.00 per month for customers that ~~do not have~~ are not assessed a demand ~~meter charge~~.
- (iv) LSP energy charge must be the sum over the billing period of the actual hourly RTSPPs for the load zone that is located partially or wholly in the customer's TDU service territory that

had the highest simple average multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.

(v) “Actual hourly RTSPP” is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(vi) “Number of kWhs the customer used” is based either on information provided by the TDU or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer’s profile type and weather zone over the customer’s entire billing period.

(~~CD~~) Large non-residential customers. The LSP rate for the large non-residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or other surcharges, RUC capacity short charges attributable to LSP load, ancillary service and ancillary service imbalance changes attributable to LSP load, and

applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

- (ii) LSP customer charge must be \$2,897.00 per month.
 - (iii) LSP demand charge must be \$6.00 per kW, per month.
 - (iv) LSP energy charge must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge must have a floor of \$7.25 per MWh.
- (3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must issue refunds to the specific customers who were overcharged.
- (4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

- (5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) – (o) [No changes proposed to PFP]

(p) **REP obligations in a transition of customers to POLR service.**

- (1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.
- (2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.
- (3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the

termination or transition of the service and the transfer to the POLR provider is complete.

- (4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.
- (5) A defaulting REP whose customers are subject to a mass transition event must return the customers' deposits within seven calendar days of the initiation of the transition.
- (6) ERCOT must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT must be tested on a periodic basis. Each REP must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must notify the commission if any REP fails to comply with the reporting requirements in this subsection.
- (7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the

appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section must be treated as confidential and must only be used for mass transition related purposes.

- (8) Information from the TDU and ERCOT to the POLR providers must be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section must not constitute a violation of the customer protection rules that address confidentiality.
- (9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider must begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider must not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the

residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it must determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider must not request a deposit from the residential customer.

- (A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director will distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will, , at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential

usage and current retail residential prices, and, if fully funded, must satisfy in full the customers' initial deposit obligation to the VREP or LSP.

- (B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.
- (C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference must be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

- (D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.
- (10) On the occurrence of one or more of the following events, ERCOT must initiate a mass transition to POLR providers, of all of the customers served by a REP:
 - (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;
 - (B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;
 - (C) Issuance of a commission order de-certifying a REP;
 - (D) Issuance of a commission order requiring a mass transition to POLR providers;
 - (E) Issuance of a judicial order requiring a mass transition to POLR providers; and
 - (F) At the request of a REP, for the mass transition of all of that REP's customers.
- (11) A REP must not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A

REP's improper use of the mass transition process may lead to de-certification of the REP.

- (12) ERCOT may provide procedures for the mass transition process, consistent with this section.
- (13) A mass transition under this section must not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, ~~the switch must be made on the next available switch date~~ the scheduled recipient REP shall be notified and given the opportunity to accelerate the switch date.
- (14) ERCOT must identify customers who are mass transitioned for a period of 60 calendar days. The identification must terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions must be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. ~~To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.~~

- (15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.
- (16) In a mass transition event, the ERCOT initiated transactions must request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider must not be considered a break in a series of consecutive months of estimates, but must not be considered a month in a series of consecutive estimates performed by the TDU. A TDU must create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset must be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU must not bill as a discretionary charge, the costs included in this regulatory asset, which must consist of the following:
- (A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and
 - (B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read

is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

- (17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU must perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU must calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU must promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) – (s) [No changes proposed to PFP]

- (t) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer must be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice must be provided within two days of the time ERCOT and the transitioning REP know that the customer must be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it must provide notice as

soon as practicable. The POLR provider must provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and must provide the notice to transitioning customers as soon as practicable. The POLR provider must email the notice to the commission staff members designated for receipt of the notice.

- (1) ERCOT notice methods must include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT must notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ~~ERCOT must study the effectiveness of the notice methods used and report the results to the commission.~~ ERCOT may use different messaging for customers transitioned to a VREP.
- (2) Notice by the REP from which the customer is transferred must include:
 - (A) The reason for the transition;
 - (B) A contact number for the REP;
 - (C) A statement that the customer must receive a separate notice from the POLR provider that must disclose the date the POLR provider must begin serving the customer;
 - (D) Either the customer's deposit plus accrued interest, or a statement that the deposit must be returned within seven days of the transition;
 - (E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR

provider, or another competitive REP, as well as the following statement: “If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”

- (F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header “An Important Message from the Public Utility Commission Regarding Your Electric Service” addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);
 - (G) If applicable, a description of the activities that the REP ~~must~~will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and
 - (H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.
- (3) Notice by the POLR provider must include:

- (A) The date the POLR provider began or ~~must~~will begin serving the customer and a contact number for the POLR provider;
- (B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period ~~must~~will not be determined until the time the bill is prepared;
- (C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;
- (D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"
- (E) The applicable Terms of Service and Electricity Facts Label (EFL); and
- (F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer

that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

- (u) [No change proposed to PFP]
- (v) **Disconnection by a POLR provider.** The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section ~~must~~will begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.
- (w) **Deposit payment assistance.**
 - (1) The commission staff designee will distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

- (2) The Executive Director or staff designee will use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:
 - (A) a list of the ESI IDs identified by the LILA that have been or ~~must~~will be transitioned to the applicable POLR (if available); and
 - (B) the amount of deposit payment assistance that ~~must~~will be provided on behalf of a POLR customer identified by the LILA (if available).
- (3) Amounts credited as deposit payment assistance pursuant to this section must be refunded to the customer in accordance with §25.478(j) of this title.

§25.471. General Provisions of Customer Protection Rules.

[No changes proposed to PFP.]

**§25.475. General Retail Electric Provider Requirements and Information Disclosures
to Residential and Small Commercial Customers.**

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) in connection with the provision of service and marketing to residential and small commercial customers. When specifically stated, the requirements of this section apply to brokers, aggregators, and transmission and distribution utilities (TDUs). ~~This section is effective for contracts entered into on or after September 1, 2021. REPs are not required to modify contract documents related to contracts entered into before this date but must provide notice of expiration as required by subsection (e) of this section.~~ The additional notice of contract expiration and ban on wholesale-indexed products for residential and small commercial customers are effective for contracts entered into on or after September 1, 2021. REPs must comply with the requirements set forth in subsections (b)(5), (b)(8), (c)(3)(D)-(G), (e)(2), (e)(3)(B)(ii), (e)(3)(C)(iii), (v), and (vii), (h)(4), (h)(6)(C), and (j) of this section by [date 120 days after adoption of the rules]. Contracts entered into prior to September 1, 2021 must comply with the provisions of this section in effect at the time the contracts were executed.
- (b) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, the following words and terms, when used in this section have the following meanings, unless the context indicates otherwise.
- (1) **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation

of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), and, if applicable, the Prepaid Disclosure Statement (PDS) Acknowledgement of Risk (AOR).

- (2) **Contract documents** -- The TOS, EFL, YRAC, and, if applicable, the ~~AOR~~ PDS.
- (3) **Contract expiration** -- The time when the initial term contract is completed.
A new contract is initiated when the customer begins receiving service pursuant to the new EFL.
- (4) **Contract term** -- The time period the contract is in effect.
- (5) **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including all recurring charges ~~and ancillary service charges~~) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REP's control.
- (6) **Indexed product** -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT

or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.

- (7) **Month-to-month contract** -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.
- (8) **Price** -- The cost for a retail electric product that includes all recurring charges, ~~including the cost of ancillary services~~, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.
- (9) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.
- (10) **Term contract** -- A contract with a term in excess of 31 days.
- (11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.

- (12) **Wholesale Indexed Product** - A retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(c) **General Retail Electric Provider requirements.**

(1) **General Disclosure Requirements.**

- (A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs, YRACs, and, if applicable, PDSs ~~AORs~~ distributed by a REP or aggregator must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:
- (i) Using the term or terms “fixed” to market a product that does not meet the definition of a fixed rate product.
 - (ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.
 - (iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.

- (iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.
 - (v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.
- (B) Written and electronic communications must not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, must include the REP's certified name or commission authorized business name, or the aggregator's registered name, and the number of the certification or registration.
- (C) The TOS, EFL, YRAC, and, if applicable, PDS-AOR must be provided to each customer upon enrollment. Each document must be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.
- (D) A REP must retain a copy of each version of the TOS, EFL, YRAC, and, if applicable, PDS-AOR during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs must provide such documents at the request of the commission or its staff.

(2) **General contracting requirements.**

- (A) Each TOS, EFL, and YRAC, ~~and, if applicable, AOR~~ must be complete, be written in language that is clear, plain and easily understood, and be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents must include a link or website address to the full text of the applicable law or rule.
- (B) Each contract document must be available to the commission to post on its customer education website if the REP chooses to post offers to the website.
- (C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving to another location. There must be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.
- (D) A TOS and EFL must disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.

- (E) A REP must not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.
 - (F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.
 - (G) For a variable price product, the REP must disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP must not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product must include a notice of how the current price and, if applicable, historical price information may be obtained by a customer.
 - (H) A REP must comply with its contracts.
- (3) **Specific contract requirements.**
- (A) The contract term must be conspicuously disclosed.
 - (B) The start and end dates of the contract must be available to the customer upon request. If the REP cannot determine the start date, the REP may

estimate the start date. After the start date is known, the REP must specify the end date of the contract by:

- (i) specifying a calendar date; or
 - (ii) reference to the first meter read on or after a specific calendar date.
- (C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.
- (D) Each contract for service must include the terms of the default renewal product that the customer will be automatically enrolled in if the customer does not select another retail electric product before the expiration of the contract term after the customer has received all required expiration notices.
- (E) If a REP does not provide proper notice of the expiration of a fixed rate contract to a residential customer and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP provides notice in accordance with applicable requirements of subsection (e)(2)(A)(i) or (ii) or the customer selects another retail electric product.
- (F) A REP, aggregator, or broker is prohibited from offering a wholesale indexed product to a residential or small commercial customer.

(G) A REP, aggregator, or broker may enroll a residential or small commercial customer in an indexed product or a product that contains a separate assessment of ancillary service charges only if the REP, aggregator, or broker ~~obtains before the customer's enrollment~~includes in the customer's EFL an Acknowledgement of Risk (AOR) in compliance with the requirements of this section.

(4) **Website requirements.**

(A) Each REP that offers residential retail electric products for enrollment on its website must prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information must not be required.

(B) The EFL for each product must be printable in no more than a two page format. The EFL, TOS, and YRAC~~, and, if applicable, AOR~~ for any products offered for enrollment on the website must be available for viewing or downloading.

(d) **Changes in contract and price and notice of changes.** A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) **Contract changes other than price.**

- (A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.
- (B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.

(2) **Price changes.**

- (A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.
- (B) For a fixed rate product, each bill must either show the price changes on one or more separate line items, or must include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.
- (C) Each residential bill for a variable price product must include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) **Notice of changes to terms and conditions.** A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the

contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

- (4) **Contents of the notice to change terms and conditions.** The notice must:
- (A) be provided in or with the customer's bill or in a separate document;
 - (B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;
 - (C) identify the change and the specific contract provisions that address the change;
 - (D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;
 - (E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty may apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and
 - (F) state in bold lettering that establishing service with another REP may take up to seven business days.

(e) **Contract expiration and renewal offers.**

- (1) **Notice Timeline for Expiration of a Non-Fixed Rate Term Product and Expiration of a Small Commercial Customer's Fixed Rate Product.**

For term products other than fixed rate products and for fixed rate products provided to small commercial customers, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP must send the notice by mail to a residential customer or must send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive ~~contract-related notices~~ communications electronically from the REP. The REP must send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive ~~contract-related notices~~ communications electronically from the REP. Nothing in this section precludes a REP from offering a new contract to the customer at any other time during the contract term.

(2) Notice Timeline for Expiration of a Residential Customer's Fixed Rate Product.

- (A) For residential customers enrolled in fixed rate products, the REP must provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of

the fixed rate contract period. For contracts with a period of 12 months or longer, the first notice may be provided up to three months prior to the contract end date. For fixed rate contracts for a period:

- (i) Of more than four months, the final notice must be provided at least 30 days before the date the fixed rate contract will expire.
 - (ii) Of four or fewer months, the final notice must be provided at least 15 days before the date the fixed rate contract will expire.
- (B) The notices must be provided to the customer by mail at the customer's billing address, unless the customer has opted to receive communications electronically from the REP.
- ~~(C) If a REP does not provide the required notice of the expiration of a customer's fixed rate contract and the customer does not select another retail electric product before expiration of the fixed rate contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided or the customer selects another retail electric product.~~

(3) Contract Expiration.

- (A) If a customer takes no action in response to the final notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP must serve the customer pursuant to a default renewal product that is a month-to-month product that the customer may cancel at any time without a fee. The month-to-month

product price may vary between billing cycles based on clear terms designed to be easily understood by the average customer.

- (B) Written notice of contract expiration must be provided in or with the customer's bill, or in a separate document.
- (i) If notice is provided with a residential customer's bill, the notice must be printed on a separate page. A statement must be included in a manner ~~readily~~visible on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."
 - (ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement in a manner ~~readily~~-visible on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or
 - (iii) If notice is provided in a separate document, a statement must be included in a manner ~~readily~~-visible on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed." for residential

customers or for small commercial customers, “Contract Expiration Notice. See Enclosed.”

- (C) A written notice of contract expiration (whether with the bill or in a separate envelope) must set out the following:
- (i) The date, in boldfaced and underlined text, as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.
 - (ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty must apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer’s fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.
 - (iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty applies to residential customers for 14 days prior to the date provided as the “on or after” date included in connection

with the first meter read language referenced in the notice, or that no termination penalty applies to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.

- (iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.
- (v) The final notice provided pursuant to subsection (e)(3) must include a copy of the EFL for the default renewal product if the customer takes no action or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.
- (vi) A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that must be included as part of the notice of

contract expiration. The TOS for the default renewal product must be included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.

- (vii) The final notice provided pursuant to subsection (e)(3) must include a statement that the default service is month-to month and may be cancelled at any time with no fee.

- (4) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:

- (A) Indicate the customer's name, billing address, service address (for small commercial customers, the ESI ID may be used rather than the service address);
- (B) Indicate the identification number of the TOS and EFL under which the customer will be served;

- (C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL, and YRAC, ~~and, if applicable, AOR;~~
 - (D) Indicate the price(s) which the customer is agreeing to pay;
 - (E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;
 - (F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and
 - (G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.
- (f) [No changes proposed to PFP.]
- (g) **Electricity Facts Label.** The EFL must be unique for each product offered and must include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

- (2) **Pricing disclosures.** Pricing information must be disclosed by a REP in an EFL. The EFL must state specifically whether the product is a fixed rate, variable price or indexed product.
- (A) For a fixed rate product, the EFL must provide the total average price for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.
- (B) For an indexed product, the EFL must provide sample prices for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula. The EFL must also include an AOR disclosure stating, “This is an indexed product. By enrolling in this product, you understand that the rate you will be charged for electricity can change for reasons beyond your control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and you must pay any amount you are properly billed. Please ensure that you understand the risks involved with this plan.”
- (C) For a variable price product, the EFL must provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state

miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.

- (D) The total average price for electric service must be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:
 - (i) For residential customers, 500, 1,000 and 2,000 kilowatt hours per month; and
 - (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.
- (E) If a REP combines the charges for retail electric service with charges for any other product, the REP must:
 - (i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and

- (ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.
- (F) The following must be included on the EFL for specific product types:
 - (i) For indexed products, the formula used to determine an indexed product, including a website and phone number customers may contact to determine the current price.
 - (ii) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone

number}.” In the disclosure chart, the box describing whether the price can change during the contract period must include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity, Inc. administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.”

- (iii) For all other variable price products, a notice in bold type no smaller than 12 point font: “Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}.” In the disclosure chart, the box describing whether the price can change during the contract period must include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside

our control.” For residential customers, the following additional statement is required: “Please review the historical price of this product available at {insert specific website address and toll-free telephone number}.”

(3) **Fee Disclosures.**

- (A) If a customer may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL must include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and must disclose how the customer can determine the price and applicability of the special charge.
- (B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.

(4) **Term Disclosure.** EFL must include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) **Renewable Energy Disclosures.** The EFL must include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting

requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL must be printed in type no smaller than ten points in size, unless a different size is specified in this section, and must be formatted as shown in this paragraph:

Electricity Facts Label (EFL)				
{Name of REP}, {Name of Product}, {Service area <i>(if applicable)</i> },				
Electricity price	Average	500kWh	1,000kWh	2,000kWh
	Average price	{x.x}¢	{x.x}¢	{x.x}¢
	For POLR	{x.x}¢	{x.x}¢	{x.x}¢
	use: Minimum			
	{If applicable} On-peak {season or time}:{xxx} {If applicable} Average on-peak price per kilowatt-hour: {x.x}¢ {If applicable} Average off-peak price per kilowatt-hour: {x.x}¢ {If applicable} Potential surcharges corresponding to the given electric service. {If variable that does not change within a defined percentage} Except for			
Other Key Terms and	<i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms</i>			

<p><i>Disclosure</i></p> <p><i>Chart</i></p>	Type of Product	(fixed rate indexed or variable)
	Contract Term	(number of months)
	Do I have a termination fee or any fees associated with	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition if the REP chooses to pass through regulatory changes the following must be required:
	What other fees may I be	(List, or give direct location in
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess distributed renewable	(yes/no)

	Renewable Content	(This product is x%
	The statewide average for renewable content is	(% of statewide average for renewable content)
	Contact info, certification number, version number	

- (7) **Version number.** A REP must assign an identification number to each version of its EFL, and must publish the number on the EFL.

(h) – (i) [No changes proposed to PFP]

~~(j) **Acknowledgement of Risk.** Before a residential or small commercial customer's enrollment in an An indexed product or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or retail electric provider must obtain include an AOR, signed by the customer, verifying in the customer's EFL that the customer accepts the potential price risks associated with the product.~~

~~(1) — for indexed products other than wholesale indexed products the AOR must include the following statement in clear, boldfaced text: “This is an indexed product. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan.~~

~~(3) — for products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: “This product contains a separate assessment of ancillary service charges. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills,~~

~~potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan.”~~

§25.479. Issuance and Format of Bills.

(a) – (c) [No changes proposed to PFP]

(d) **Public service notices.** A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. ~~Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:~~

(1) Additionally, in April and December of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:

(4i) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151;

(2ii) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;

(3~~iii~~) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and

(4~~iv~~) Reducing electricity use at times when involuntary load shedding events may be implemented.

(2) A REP may satisfy (i)-(iii) above by directing customers to a website or websites maintained for purposes of Section 25.475(h)(4). A REP may satisfy (iv) above by directing customers to an appropriate website maintained by the REP, the commission, ERCOT, or a TDU.

(e) – (h) [No changes proposed to PFP]

§25.498. Prepaid Service.

[No changes proposed to PFP]

§25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.

- (a) [No changes proposed to PFP]
- (b) **Application.** This section applies to all retail electric providers (REPs), aggregators and brokers. The Acknowledgement of Risk (AOR) for wholesale indexed products required by this section is effective for enrollments or re-enrollments entered into on or after September 1, 2021. The AOR required for other product types are effective for enrollments or re-enrollments entered on or after [date 120 days after adoption of the rules]. REPs are not required to modify contract documents related to contracts or enrollments entered into before this date.
- (c) – (d) [No changes proposed to PFP]

Important Information About Electricity Load Shedding and What It Could Mean to You

The Electric Reliability Council of Texas (ERCOT) manages the flow of electric power to more than 26 million Texas customers covering most of the state. ERCOT is responsible for ensuring that the supply of electricity is sufficient to meet customer demand (load) for electricity ~~in most of the state~~.

When electric supply provided by all available power generation plants, wind and solar farms, and other sources becomes insufficient to meet customer demand, ERCOT begins emergency operations. During a power emergency when electric supply cannot meet consumer demand for electricity and all other operational tools have been exhausted, the demand for electricity must be reduced to keep the grid balanced and avoid uncontrolled blackouts. As a last resort, ERCOT will instruct electric utilities to implement controlled customer outages to reduce the customer demand for electricity on the ERCOT grid. This is referred to as “load shed” and will last until the power emergency is resolved by ERCOT.

Typically, before calling for controlled customer outages, ERCOT takes steps to reduce the demand on the electric grid by asking customers to voluntarily reduce electric usage. Electric utilities, ~~including <company name>~~, are obligated to immediately implement load shed procedures when ERCOT instructs.

During customer load shed events:

- All customers should assume that their power could go out without advanced warning. Efforts will be made, as much as possible, to provide advanced notification of pending outages, but circumstances do not always allow that to happen.
- Customers designated as **Critical Load**, in accordance with Public Utility Commission of Texas (“PUCT”) Rule §25.497, are not guaranteed an uninterrupted supply of electricity. It is the responsibility of the retail customer to make necessary arrangements for alternative sources of electric power should a localized outage or load shed event occur.
- Residential customers dependent on electric-powered medical equipment or that have other qualifying conditions may submit an application to their electric utility, such as those to be designated as **Critical Care** or **Chronic Condition**, in accordance with PUCT Rule §25.497, ~~are encouraged to have a solid back-up plan in the event they lose electricity. It is important to note that these customers are not excluded from controlled outages and may lose power during a load shed event. Anyone who depends on electricity for life-sustaining equipment should have a back-up plan in place.~~

- The procedure for a customer to apply to be considered a ~~eCritical eCare~~ residential customer, a Chronic Condition residential customer, or a eCritical ~~Load industrial customer, or critical load according to commission rules,~~ can be found on the utility ~~<company name>~~'s website at: ~~<link>~~.
- Electric utilities will prioritize continuity of service for certain customers whose service is critical to the community during an emergency or those whose service provides major support to the integrity of the electric system during an emergency. Examples include hospitals, major airports, and 911.
- Because a load shed event is an emergency order from ERCOT based on a shortfall of electricity being generated, electric utilities, ~~including <Company name>~~, do not have the information to be able to notify individual customers if they may lose power, when they may lose power or how long the load shed event may last.
- In extreme power emergencies, ERCOT may require electric utilities to shed large amounts of load over long periods of time. In these instances, electric utilities ~~like <Company name>~~ may not have the ability to rotate outages without risking the stability of the entire electric grid. When this happens, some customers may be without power for an extended period of time. These outages are critical for ensuring the integrity of the state's electric grid and preventing a system-wide blackout, which could be long-lasting and have a significant impact on all aspects of life.
- Electric utilities are required to continue to comply with ERCOT controlled customer outage instructions until ERCOT determines that outages are no longer required.
- The ~~Public Utility Commission of Texas~~ PUCT website ~~(Hot and Cold Weather, and General Energy Saving Tips)~~ provides examples for customers to reduce electricity use provides tips on how customers can conserve electricity on its "Ways to Save" page, available at: <https://www.puc.texas.gov/consumer/facts/Save.aspx>. These tips will help to reduce the strain on the electric grid at times when involuntary load shedding events may be implemented.

Regardless of the nature of the load shedding event, ~~<Company name>~~ the electric utility is committed to ensuring the safe and reliable delivery of electricity to ~~its~~ customers 24-hours-per-day, 7-days-per-week. ~~While the company may not control the issues or conditions that have required ERCOT's order to shed load, we~~ The electric utility will do everything in ~~our~~ its power to restore electricity when ~~we are~~ able to safely do so. In addition, ~~we~~ the electric utility will work to keep ~~our~~

customers and retail electric providers informed about the situation through local media outlets, social media, and direct communications ~~to you~~.

Electric Utility Contacts:

CenterPoint Energy: <website>

ONCOR Electric Delivery: <website>

Texas-New Mexico Power: <website>

AEP Texas: <website>

Sharyland Utilities: <website>